THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION Nos.11865 OF 2005 & 4431 OF 2004

COMMON ORDER:

The petitioners in these two writ petitions claim to be the owners and possessors of Ac.1.31 guntas of land situated in Sy.No.228 of Bandarugudem village, Manuguru Mandal, Khammam district, which is notified as a scheduled area. The 2nd petitioner is the son of the 1st petitioner. It is stated that the 1st petitioner purchased the above said land in the year 1961 from the grandfather of respondent No.4 by name Bandaru Tirumali. Having purchased the said land, the petitioners constructed two houses in a part of the land and raised mango garden in the rest of the land. It is also claimed that soon after purchase, the necessary mutations were affected in the revenue records and, title deed and pattedar pass book were also issued in favour of the 1st petitioner by the Mandal Revenue Officer, Manuguru Mandal after due enquiry as to the title and possession.

While so, on a complaint made by the father of the 4th respondent, by name Chennabbai, proceedings were initiated under the provisions of the Andhra Pradesh Scheduled Areas Land transfer Regulation, 1959, for evictions of the petitioner, however, the Special Deputy Collector, Tribal Welfare, Badrachalam, after hearing both the parties and, on appreciation of the material on record, by order dated 2.2.1984 dismissed the said eviction proceedings. In spite of the same, the grandfather of the 4th respondent again invoked the provisions of the Andhra Pradesh Scheduled Areas Land transfer Regulation, 1959, seeking eviction of the 1st petitioner. The said proceedings were dropped by the Special Deputy Collector, Tribal Welfare, by order dated 4.12.1987 on the ground that the matter was already concluded by virtue of the earlier order dated 2.2.1984 in the proceedings initiated by the father of the 4th respondent. Again

the grandfather of the 4th respondent filed a petition for eviction, but the same was also dismissed on 1.7.1992. Admittedly, all the said orders have become final.

While so, the 1st respondent issued a notice calling upon the petitioners to show cause as to why they should not be ejected from the land in question. The contents of the said notice show that the proceedings were initiated under the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 *suo motu* by the 1st respondent-Special Deputy Collector, Tribal Welfare, Badrachalam, alleging that the petitioners who are non-tribals were in possession of the land in question, illegally. The petitioners were called upon to attend the hearing on 3.10.2002. Accordingly, the petitioners appeared before the 1st respondent and filed a counter on 10.12.2002 through their counsel denying all the allegations. However, on 22.12.2002 the petitioners were served with a copy of the order dated 11.11.2002 passed by the 1st respondent directing ejection of the petitioners from 0.10 guntas, out of Ac.1.31 guntas of the land in their possession. Aggrieved by the same, the 1st petitioner preferred an appeal before the Agent to the Government/District Collector on 24.12.2002. Pending the said appeal, since the appellate authority failed to consider the application for interim stay, the 1st petitioner filed W.P.No.357 of 2003. The said writ petition was disposed of by this Court by order dated 8.1.2003 granting stay of operation of the order of eviction dated 11.11.2002. In the meanwhile, the 2nd respondent/Additional Agent to the Government/Project Officer, ITDA., Badrachalam, was conferred with the appellate powers and, accordingly, the appeal (C.M.A.No.1 of 2003) pending on the file of the Agent to the Government, was made over to respondent No.2 and renumbered as C.M.A.No.97 of 2003.

It is relevant to note that the post of Additional Agent to the Government , by that time was held by the very same officer who

passed the order of eviction dated 11.11.2002 as Special Deputy Collector, (Tribal Welfare), Badrachalam. In the circumstances, the petitioners filed W.P.No.1568 of 2004 seeking a Writ of Prohibition restraining the 2nd respondent from proceeding with the appeal. By virtue of the order of this court dated 29.01.2004 in the said writ petition, the appeal was transferred to the Agent to the Government/District Collector, Khammam, and renumbered as C.M.A.No.1 of 2003.

The 5th respondent-Agent to the Government, after hearing both the parties, by order dated 21.4.2005 though allowed the appeal and set aside the order of ejection dated 11.11.2002, remanded the matter to the Special Deputy Collector, Tribal Welfare, for consideration afresh. That apart, the 5th respondent had also directed to reopen all the eviction proceedings, which were dropped earlier after full-fledged enquiry. The 5th respondent directed that a fresh enquiry be conducted into all the above cases pertaining to Sy.No.228 of Manuguru village and to dispose of the same following due process of law and till then *status quo* shall be maintained. The said order passed by the 5th respondent dated 21.4.2005 in C.M.A.No.1 of 2003 is under challenge in W.P.No.11865 of 2005.

While the appeal was still pending on the file of the Additional Agent to the Government/Project Officer, ITDA., by proceedings dated 10.2.2004, the Sub-Divisional Police Officer, Manuguru, was directed to book cases under Section 6-A of the Andhra Pradesh Scheduled Areas Land transfer Regulation, 1959 as amended by Regulation 1 of 1970 against all non-tribals, including the 1st petitioner herein and to re-induct the tribals into the land in question. Aggrieved by the said proceedings dated 10.2.2004, the petitioners filed W.P.No.4431 of 2004.

Since both the writ petitions are based on the same set of facts and common questions of fact and law arise for consideration, they are

heard together.

The learned counsel for the petitioners Sri A. Rajasekhar Reddy, at the outset, contended that the 5th respondent/Agent to the Government, has no power to remand the matter under the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 and, therefore, the impugned order being without jurisdiction is liable to be set aside. The learned counsel also contended that since the orders passed by the Special Deputy Collector in the earlier proceedings have become final, the 5th respondent ought not to have reopened the same and the impugned order directing fresh enquiry in to the all the said cases is impermissible, apart from being arbitrary and illegal.

On the other hand, the learned Government Pleader for Social Welfare, appearing for the official respondents, contended that since the earlier orders were passed without proper enquiry and particularly in view of the conflicting findings recorded in the order of eviction, dated 11.11.2002, the appellate authority has rightly remanded the matter for fresh enquiry which is essential to resolve the issues involved conclusively.

At the outset, it is to be noted that the Andhra Pradesh Scheduled Areas Land transfer Regulation, 1959 has been enforced in Telangana area with effect from 1.12.1963. Admittedly, the land to an extent of Ac.1.31 guntas claimed by the petitioners herein is situated in Sy.No.228 of Bandarugudem village of Manuguru Mandal, in Khammam district, which forms part of Telangana area. Thus, it is not in dispute that the provisions of Regulation 1 of 1959 are applicable to the land in question only from 1.12.1963.

It is true that the writ petitioners are non-tribals, and purchased the land in question from a tribal (grandfather of 4th respondent). However, their specific case is that they purchased the above said land under an agreement of sale dated 11.2.1961, much prior to enforcement of Regulation 1 of 1959. It is also their case that the title

deed i.e., agreement of sale was impounded by the Mandal Revenue Officer, Manuguru by collecting the requisite stamp duty and, thereafter, passbook was issued in their favour under the provisions of the A.P. Rights in Land and Pattedar Pass Books Act, 1971.

It is also an admitted fact that the order of ejection dated 11.11.2002 passed by the Special Deputy Collector, Tribal Welfare, Badrachalam in L.T.R.No.86/2002/MGR was an *ex parte* order, without taking into consideration the version of the respondents/non-tribals therein including the writ petitioners. The said order of ejection covers three survey numbers viz., Sy.Nos.228, 225 and 209 of Manuguru village. So far as the writ petitioners are concerned, it was held that as per the evidence produced it was established that the transfer of land in Sy.No.228 to an extent of Ac.0.10 guntas each in favour of the writ petitioners was in contravention of Section 3(1) of Regulation 1 of 1959 read with Regulation 1 of 1970 after commencement of the said Regulations and, therefore, it was *null and void.* Accordingly, ejectment of the writ petitioners was ordered from the said land to an extent of Ac.0.10 guntas each in Sy.No.228. A perusal of the said order dated 11.11.2002 shows that the 4th respondent placed before the Special Deputy Collector three documents in support of his allegation that he was dispossessed by non-tribals forcibly. The said documents are as under:

1. A xerox copy of the pahani for the year 1995-96 and 1999-2000;
2. Xerox copies of land revenue receipts for the year 1977-1979 and 1980-1995;
3. A xerox copy of Ryothwari passbook for the year 1979.

As noted above, the petitioners were not heard, but the Special Deputy Collector merely on the basis of the above documents arrived at a conclusion that the land in Sy.No.228 belonged to the 4th respondent and the writ petitioners (non-tribals) came into possession of the same after enforcement of Regulation 1 of 1959.

Aggrieved by the said order of ejection, the writ petitioners

preferred an appeal along with all the relevant documents to substantiate their claim that they came into possession of the land in question much prior to the commencement of Regulation 1 of 1959, having purchased the land under an agreement of sale dated 11.2.1961, which was subsequently impounded by the competent authority. The 5th respondent-appellate authority having taken note of the said documents, which include copies of pahanies for the year 1961-62, though set aside the order of ejection, curiously remanded the matter to the 1st respondent directing fresh enquiry into all the cases which were dismissed way back and attained finality.

It is a matter of record that in respect of the very same land in possession of the writ petitioners i.e., Ac.1.31 guntas situated in Sy.No.228 of Bandarugudem village, proceedings were initiated earlier under Section 3(1) of Regulation 1 of 1959 vide case No.24/83/MGR. The Special Deputy Collector having heard the writ petitioners/non-tribals as well as the complainant (father of 4th respondent) and having made a thorough enquiry recorded a finding of fact that the said land was purchased by the writ petitioners on 11.2.1961, much prior to the enforcement of Regulation 1 of 1959 and ever since they have been in possession of the same, dismissed the eviction petition by order dated 2.2.1984. It is also not in dispute that in respect of Ac.1.00 out of Ac.1.31 guntas of the above said land, fresh proceedings were initiated for eviction vide case No.238/87/MGR, but the same were dropped in view of the findings already recorded in case No.24/83/MGR. Similarly, eviction proceedings initiated vide case No.1132/88/MGR in respect of Ac.1.31 guntas of land in Sy.No.228 were also dropped by order dated 31.7.1992 on the ground that the orders in case No.24/83/MGR have become final. Copies of the said orders were placed before the 5th respondent by the writ petitioners. Though the 5th respondent noted the fact that the said orders became final, without referring to the

findings recorded therein, remanded the matter for fresh enquiry merely on the ground that the panchanama dated 23.1.2003 under which the land in possession of other non-tribals covered by the order dated 11.11.2002 was allegedly restored to tribals did not reveal boundaries and, therefore, there was some confusion with regard to the extent and identity of the land involved.

In the facts and circumstances narrated above, the question that arises for consideration is whether the 5th respondent is competent to remand the matter for fresh enquiry, particularly on the alleged ground that there was confusion with regard to the extent and identity of the land in question.

Section 3(2) (a) of the Regulation 1 of 1959 runs as under:

> "3. *Transfer of immovable property by a member of a Scheduled Tribe:-*
>
> 1.....
>
> (2) (a) Where a transfer of immovable property is made in contravention of sub-section (1), the Agent, the Agency Divisional Officer or any other prescribed officer may, on application by any one interested, or on information given in writing by a public servant, or *suo motu* decree rejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transfer or his heirs."

From the above provision, it is clear that the proceedings for ejectment can be initiated either on application by any one interested, or *suo motu* by the competent authority. As held by a Division Bench of this Court in **Special Deputy Collector (Tribal Welfare) v. Datla Venkapathi Raju** (2002(4) ALT 669), the principle of *res judicata* is not applicable to the proceedings initiated under the provisions of Regulation 1 of 1959 when the parties to the earlier proceedings and the present proceedings are different. In the said decision it was also made clear by the Division Bench that in the absence of any fresh material *suo motu* proceedings for review of the earlier order cannot be initiated. In such circumstances, subsequent proceedings reviewing the orders passed in the earlier proceedings are incompetent.

In **C. Ramalinga Raju v. District Collector, Eluru, West Godavari District** (2000(4) ALD 443), it was made clear by another

Division Bench that in the absence of an enabling provision in Regulation 1 of 1959, the Special Deputy Collector is not competent to initiate fresh proceedings for eviction.

The learned Government Pleader, however, contended that the ratio laid down in the said decisions is not applicable to the facts of the case on hand.

Having carefully considered the material placed before this Court, particularly the order passed by the Special Deputy Collector in case No.24/83/MGR dated 2.2.1984 holding that the writ petitioners came into possession of the land in question much prior to the enforcement of the Regulation 1 of 1959, which admittedly, has become final, I am of the opinion that the 5th respondent was not justified in remanding the matter for fresh enquiry. Nothing has been placed before this Court to show that any fresh material is made available to disturb the finding recorded by the competent authority after hearing both parties in case No.24/83/MGR dated 2.2.1984. As a matter of fact, the order of ejection dated 11.11.2002 as well as the impugned order passed by the 5th respondent clearly show that the 4th respondent did not produce any documents to show that his ancestors were in possession of the land in question prior to the enforcement of Regulation 1 of 1959 in Telangana area.

Having regard to the facts and circumstances of the case, the 5th respondent having rightly set aside the order of ejection, committed an error in directing fresh enquiry. The panchanama said to have been conducted in the year 2003 was only consequent to the order of ejection passed by the Special Deputy Collector dated 11.11.2002. Even assuming that there were any discrepancies with regard to the extent or boundaries of the land, the same cannot be a ground to remand the matter for fresh enquiry.

In the circumstances, the impugned order to the extent of remanding the mater for fresh enquiry is set aside and W.P.No.11865

of 2005 is allowed upholding the conclusion of the 5th respondent in setting aside the order of ejection dated 11.11.2002.

Since the order of ejection is set aside, the direction in the order impugned in W.P.No.4431 of 2004, to register cases under Section 6-A of the Regulation 1 of 1959 as against the petitioners has been rendered superfluous. Accordingly, the said order is set aside, so far as the writ petitioners are concerned.

In the result, Writ Petition Nos.11865 of 2005 and 4431 of 2004 are allowed. No costs.

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(G. ROHINI, J.)

June , 2006.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION Nos.11805 OF 2005 & 4431 OF 2004

W.P.No.11805 of 2005:

Between:

Pillarisetty Harinath Babu and another. .. Petitioners.

And

The Special Deputy Collector, (Tribal Welfare), Badrachalam, Khammam district and four others. .. Respondents.

W.P.No.4431 of 2004:

Between:

Pillarisetty Harinath Babu and another. .. Petitioners.

And

The Special Deputy Collector, (Tribal Welfare), Badrachalam, Khammam district and five others. .. Respondents.